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EXAMINER

FRENEL, VANEL

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 06/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/616,276

Applicant(s)

DUSSIA, EVAN E.

Examiner

Vanel Frenel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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DETAILED ACTION

***Notice to Applicant***

1. This communication is in response to the amendment filed March 10, 2003. Claim 5 has been cancelled. Claims 1-2, 6-9, 12, 18 and 21 have been amended. Claims 22-24 have been added. Claims 1-4 and 6-24 are pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavin et al (95,772,585) in view of Iliff (6,206,829).

(A) As per claim 1, Lavin discloses a medical health record storage and retrieval system comprising:

an extraction module operable to extract a patient's medical diagnosis and treatment information from respective progress notes of a physician (See Lavin Col.1, lines 21-63 to Col.2, line 38; Col.9, lines 1-57).

a storage module configured to store the extracted diagnosis and treatment information in a logically connected database (See Lavin, Col.9, lines 40-67 to Col.10, line 11).

The teachings of Lavin do not explicitly disclose a server configured to allow web-enabled data sharing access to the stored database by authorized users using a remote or local web-enabled device.

However, this feature is known in the art, as evidenced by Iliff. In particular, Iliff suggests a server configured to allow web-enabled data sharing access to the stored database by authorized users using a remote or local web-enabled device (See Iliff, Col.73, lines 1-67 to Col.74, line 67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Iliff within the teachings of Lavin with the motivation of providing a MDATA system which utilizes communication networks, such as the Internet, to connect a user or patient with the MDATA computer. The user utilizes a network access processor or computer to access the network so that medical diagnostic scripts can be executed on a script engine to generate medical advice or a diagnosis (See Iliff, Col.4, lines 46-67).

(B) As per claim 22, Lavin discloses the system further comprising a processor module configured to track users accessing the database, to bill the accessing users for each access of the database, and to allocate fees among entities associated with the respective medical diagnosis and treatment information accessed by respective users (Col.1, lines 21-67 to Col.2, line 38).

The motivation for combining the respective teachings of Lavin, and Iliff are as discussed above in the rejection of claim 1, and incorporated herein.

(C) As per claim 23, Lavin discloses the system wherein the processor module is further configured to control access of the database according to authorship of information in the database (Col.5, lines 36-67 to Col.6, line 44).

The motivation for combining the respective teachings of Lavin, and Iliff are as discussed above in the rejection of claim 1, and incorporated herein.

(D) As per claim 24, Lavin discloses the method further comprising controlling access of the database according to authorship of information in the database (Col.5, lines 36-67 to Col.6, line 44).

4. Claims 2-4, 6-8, 10-17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavin et al (5,772,585) in view of Evans (6,347,329).

(A) As per claim 2, Lavin discloses a computerized method for managing respective health records of a plurality of patients, said method comprising:

uploading a progress note of a respective patient, said progress note comprising data relative to an encounter between a respective physician and the respective patient (See Lavin, Col.6, lines 1-57; Col.8, lines 61-67 to Col.9, line 29);

identifying on said progress note respective parameters selectable by the respective physician (See Lavin, Col.9, lines 9-65);

storing said progress note with said identified parameters in a database accessible to a plurality of authorized users (See Lavin, Col.9, lines 9-67; Col.10, line 11).

Lavin does not explicitly disclose populating said database with respective progress notes resulting from further encounters between the respective patient and any respective physician so as to create a historical set of progress notes for that respective patient.

However, this feature is known in the art, as evidenced by Evans. In particular, Evans suggests populating said database with respective progress notes and respective identified parameters resulting from further encounters between the respective patient and any respective physician so as to create a historical set of progress notes with identified parameters for that respective patient, the set of historical progress notes being interconnectable based on one or more logic operators (See Evans Col.7, lines 46-67 to Col.8, line 65; Col.12, lines 3-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Evans within the collective teachings of Lavin with the motivation of providing instant access to a patient's electronic medical record by authorized healthcare providers from any geographical location. Thus, the EMR system enables authorized healthcare providers to access and update patient files using wireless pen-based personal computers. To enable complete replacement of physical records, the present invention permits healthcare providers, such as physicians or nurse practitioners to electronically annotate patient data. Thus, a healthcare

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provider can acknowledge reviewing patient data, provide instructions, such as prescriptions for medication to administer to a patient, and approve recommendations for treatment by other providers, all by electronically annotating a patient's record. In addition, authorized healthcare providers can access a record while other providers use the same record allowing for real-time collaboration. The availability of electronic data permits instant, sophisticated analysis of patient data. Moreover, the EMR system enables enhanced analysis of patient data by providing access to reference databases for diagnosis, procedures and medication (See Evans Col.2, lines 50-67 to Col.3, line 2).

(B) As per claim 3, Evans discloses the computerized method wherein the identified parameters are selected to convey a snapshot of said encounter (Col.6, lines 15-41).

The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

(C) As per claim 4, Evans discloses the computerized method wherein the identified parameters are selected from the group of consisting of diagnosis and prescription parameters (Col.11, lines 15-35).

The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

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(D) As per claim 6, Evans discloses the computerized method wherein one of the logical operators comprises a chronology-indicative operator (Col.9, lines 43-67 to Col.10, line 22).

The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

(E) As per claim 7, Evans discloses the computerized method wherein one of the logical operators comprises a pathology-indicative operator (Col.1, lines 37-58).

The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

(F) As per claim 8, Evans discloses the computerized method wherein one of the logical operators comprises a pharmacology-indicative operator (Col.11, lines 1-41).

The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

(G) As per claim 10, Lavin discloses the computerized method wherein the database is accessible to the plurality of users through a communications network (Col.4, lines 43-59).

(H) As per claim 11, Evans discloses the computerized method wherein the communications network comprises the Internet (Col.12, lines 60-67).

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The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

(I) Claim 12 differs from claim 2 by reciting a computer-readable medium encoded with computer program code for managing respective health records of a plurality of patients, the program code causing a computer to execute a method comprising:

As per this limitation, it is noted that Lavin discloses uploading a progress note of a respective patient, said progress note comprising data relative to an encounter between a respective physician and the respective patient (Col.6, lines 1-57; Col.8, lines 61-67 to Col.9, line 29);

identifying on said progress note respective parameters selectable by the respective physician (Col.9, lines 9-65);

storing said progress note with said identified parameters in a database accessible to a plurality of authorized users (Col.9, lines 9-67; Col.10, line 11).

Evans discloses populating said database with respective progress notes and respective identified parameters resulting from further encounters between the respective patient and any respective physician so as to create a historical set of progress notes with identified parameters for that respective patient, the set of historical progress notes being interconnectable based on one or more logic operators (See Evans Col.7, lines 46-67 to Col.8, line 65; Col.12, lines 3-67).

Thus, it is readily apparent that these prior art systems utilize program code to perform their specified function.

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The remainder of claim 12 is rejected for the same reason given above for claim 2, and incorporated herein.

(K) Claims 13-17 and 19-20 recite the underlying process steps of the elements of claims 3-11, respectively. As the various elements of claims 3-8 and 10-11 have been shown to be either disclosed by or obvious in view of the collective teachings of Lavin and Evans, it is readily apparent that the apparatus by the applied prior art performs the recited underlying functions. As such, the limitations recited in claims 13-17 and 19-20 are rejected for the same reasons given above for method claims 3-8 and 10-11, and incorporated herein.

5. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lavin et al (5,772,585) in view of Evans (6,347,329). as applied to claims 2 and 12 above, and further in view of Walker et al (5,949,875).

(A) As per claims 9 and 18, the collective teachings of Lavin and Evans do not expressly disclose tracking users accessing information in the database to process respective billing of the accessing users for each access of the database and allocating fees among entities associated with the respective information accessed by respective users. However, this feature is known in the art, as evidenced by Walker.

Walker discloses the computerized method further comprising tracking users accessing information in the database to process respective billing of the accessing

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users for each access of the database (See Walker Col.3, lines 5-23; Col.9, lines 65-67 to Col.10, line 15), and allocating fees among entities associated with the respective information accessed by respective users (Col.5-67 to Col.4, line 8).

The motivation for combining the respective teachings of Lavin, and Evans are as discussed above in the rejection of claim 2, and incorporated herein.

6. Claim 21 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Lavin et al (5,772,585), Iliff (6,206829) in view of Walker et al (5,949,875).

(A) As per claim 21, Lavin discloses a medical health record storage and retrieval system comprising:

means for extracting a patient's medical diagnosis and treatment information from respective progress notes dictated by a physician (See Lavin Col.1, lines 21-63 to Col.2, line 38; Col.9, lines 1-57).

means for storing the extracted diagnosis and treatment information in a logically connected database (See Lavin Col.1, lines 21-63 to Col.2, line 38; Col.9, lines 1-57).

means for allowing web-enabled data sharing access to the stored database by authorized users using a remote or local web-enabled device; (See Iliff, Col.73, lines 1-67 to Col.74, line 67).

The motivation for combining the respective teachings of Lavin, and Iliff are as discussed above in the rejection of claim 1, and incorporated herein

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The collective teachings of Lavin and Iliff do not expressly disclose means for tracking users accessing the database and for billing the accessing users for each access of the database, and for allocating fees among entities associated with the respective medical diagnosis and treatment accessed by respective users.

However, this feature is known in the art, as evidenced by Walker. In particular, Walker suggests means for tracking users accessing the database and for billing the accessing users for each access of the database, and for allocating fees among entities associated with the respective medical diagnosis and treatment accessed by respective users (See Walker, Col.3, lines 5-67 to Col.4, line 8).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Walker within the collective teachings of Lavin and Iliff with the motivation of providing a method and apparatus for using an access management computer to control a user's access digital data located at a data site, while causing a billing system to toll the user's access to the data (See Walker, Col.3, lines 5-23).

### ***Response to Arguments***

7. Applicant's arguments filed on 03/10/03 with respect to claims 1-4 and 6-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 3/10/03 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in order in which they appear in the response filed 3/10/03.

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(A) At pages 4-12 of the response, Applicant argues that the newly added features in the 03/10/03 amendment are not taught or suggested by the applied references.

In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 03/10/03 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Lavin, Walker, and/or Evans, in light of Iliff, based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the present Office Action and in the prior Office Action (paper number 5), and incorporated herein. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

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8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied art teaches method using central epidemiological database (5,911,132), computerized medical diagnostic and treatment advice system including network access (6,206,829) and method and apparatus for electronically accessing and distributing personal health care information and services in hospitals and homes (5,867,821).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 703-305-4952. The examiner can normally be reached on 6:00am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 703-305-9643. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

V.F

V.F

June 2, 2003

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER  
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